

**IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

DONALD M. UMPHENOUR	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No.: U406-12-475
	)	
JUDITH A. O'CONNOR	)	
	)	
Defendant.	)	
	)	

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Abbott Law Firm, LLC  
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*Attorney for Plaintiff*

Judith A. O'Connor  
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*Pro-Se Defendant*

**ORDER AND OPINION ON PLAINTIFF'S MOTION FOR RECONSIDERATION**

On March 22, 2011, Plaintiff Donald M. Umphenour filed a Motion for Reconsideration pursuant to *Court of Common Pleas Civil Rule 59(e)*, of this Court's Order requiring Plaintiff to post funds or a surety bond. Plaintiff subsequently filed a memorandum in support of the Motion. This is the Court's decision on Plaintiff's Motion.

This action was filed by Plaintiff in the Court of Common Pleas on December 26, 2006. A default judgment was filed against Defendant on February 21, 2007. Defendant then filed a Motion to Vacate Default Judgment. The Motion to Vacate Default Judgment was heard and granted by the Court on March 18, 2011. The pending motion was timely filed four (4) days later.

At the conclusion of the hearing on Defendant's Motion to Vacate Default the Court, *sua sponte*,<sup>1</sup> ordered Plaintiff to post, within sixty (60), days the sum of \$18,000.00 in cash or surety bond, to be held by the Court pending the outcome of the case. By way of background, that sum had originally been held by a local attorney, as escrow agent for the buyers of real property purchased from Plaintiff and Defendant. A dispute over the proceeds of the sale of the real property resulted in the escrow. Upon the entry of the default judgment against Defendant in February, 2007, the escrow agent released the \$18,000.00 to the Plaintiff.

Plaintiff objected at that point to the Court's Order. The Court indicated that Plaintiff should provide the Court with authority as to Plaintiff's position. The issue before the Court is whether the Court possesses the inherent authority to order cash or a surety bond to be placed with the Court pending the outcome of the case.

The applicable standard on a motion for reconsideration or reargument is well settled. A party seeking reargument must show that the court misapprehended the law or the facts in a manner that would change the outcome of its decision if it were correctly and/or fully informed.<sup>2</sup> A motion for reargument will be denied when it relies upon grounds not raised in the original proceedings or when it merely advances the same matters that were already raised in the original proceeding.<sup>3</sup> The granting or denial of a Rule 59(e) motion is within the sound discretion of the trial court.<sup>4</sup>

Plaintiff, in the Motion for Reconsideration, contends that this Court lacks express statutory authority as well as inherent authority to order a party to post cash or a surety bond prior to the entry of a final judgment. Further, Plaintiff contends that there is no procedural rule

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<sup>1</sup> *Sua sponte* is defined as "without prompting or suggestion, on its own motion." Black's Law Dictionary 1437 (7<sup>th</sup> ed. 1999).

<sup>2</sup> *Steadfast Ins. Co. v. Eon Labs MFG., Inc.*, 1999 WL 743982 (Del. Super. Ct. Aug. 18, 1999).

<sup>3</sup> *Id.* at \*1.

<sup>4</sup> *Brown v. Weiler*, 719 A.2d 489 (Del. 1998).

which would permit the Court to order such relief. Finally, Plaintiff argues that to permit such relief, the ruling of the Court would deprive Plaintiff of his constitutional rights to due process.

Defendant O'Conner has not submitted any authority supporting the Court's ruling. Because Defendant is *pro se* and the Court issued the Order *sua sponte*, the Court did not expect Defendant to submit anything in support of the Court's order, and the Court's decision is in no way a reflection of Defendant's failure to submit any writing. The Court has however, on several occasions, strongly suggested that Defendant obtain legal counsel, and again makes that suggestion as this case proceeds.

Upon researching the issue, the Court can find no statute, rule of court, nor case precedent to support its ruling. Therefore, the Court agrees with Plaintiff's position that this Court lacks the authority, express or inherent, to order a party to post cash or a surety bond prior to the entry of a final judgment in the matter. The Court's Order requiring Plaintiff to post cash or surety bond with the Court was an issue that was raised by the Court *sua sponte*. No motion was ever before the Court upon which to base such an Order. Further, no basis was established on the record for requiring such deposit.

For the foregoing reasons, Plaintiff's Motion for Reconsideration is granted. The Court hereby amends its Order, striking the requirement for Plaintiff to post cash or a surety bond in the amount of \$18,000.00 with the Court. However, the Order of this Court granting Defendant's Motion to Vacate Default Judgment remains in effect.

**IT IS SO ORDERED this 1<sup>st</sup> day of July, 2011.**

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Joseph F. Flickinger, III  
Judge

